



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 9435804

Date: MAY 20, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that while the Petitioner established his eligibility as a member of the professions holding an advanced degree, he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
 - (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or

educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

- (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

As acknowledged by the Director, the record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree.³ The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner is employed as a senior research associate for [REDACTED] in Pennsylvania. The record contains a letter from the company's president indicating that the Petitioner specializes in the areas of software development, property management, IT development, and biotech research, and notes that his responsibilities include "investigat[ing] the feasibility of the application of a wide array of scientific principles/concepts as it relates to our research projects." The letter further indicates that the Petitioner will work on a number of specific research projects at the company's greenhouse, where he will study plants containing [REDACTED] and other [REDACTED] properties, and states that the resulting goal will be "to develop [REDACTED] drugs for the purpose of treating [REDACTED] Finally, the letter states that in addition to the noted research projects, the Petitioner "will participate in a study analyzing the demographic features of the cohorts of subjects both with and without [REDACTED] this study will rely on multivariate logistic regression analysis to explore the relationship between [REDACTED] treatments, and [REDACTED]"⁴

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner proposes to "continue his work on using statistical methods to find significant trends in medical data," and states that he intends to "further [his] research on [REDACTED] and the prevention of [REDACTED] as a [REDACTED] complication." According to the Petitioner, this endeavor is the focus of his work in his current position at [REDACTED] where he "utilize[s] statistical methods to find trends in medical data on these issues." The Petitioner claimed that his research to date has established a connection between [REDACTED] and [REDACTED] and has also revealed a [REDACTED] treatment that helps to significantly lessen the risk of [REDACTED] The Petitioner claims that his continued research in this area, and generally in the field of medical [REDACTED] will provide data on important shifts in the medical field, such as changing attitudes toward complementary and alternative medicine, and will provide data enabling the early detection of [REDACTED] thus decreasing mortality rates and costs associated with them.

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ The record indicates that the Petitioner earned a bachelor of medicine and bachelor of surgery from [REDACTED] University in 2007, as well as a master of public health (MPH) from the [REDACTED] University in 2011. The record also demonstrates that the Petitioner has [REDACTED] board certification.

⁴ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his current position to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

The Director determined that the Petitioner's proposed endeavor has both substantial merit and national importance, and we agree with that determination. The record includes information about the benefits of [redacted] research, the growing demand for complementary and alternative medicine, the perceived benefits of enhancements in [redacted] research, and numerous letters of support discussing the potential benefits of his proposed research and how it stands to advance his field. The record also includes documentation indicating that the benefit of the Petitioner's research undertaking has broader implications, as the results have been disseminated to others in the field through medical journals. As the Petitioner has documented both the substantial merit and national importance of his proposed research, he meets the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes documentation of his curriculum vitae, academic credentials, medical certification, and published articles. He also offered evidence of his peer review of manuscripts in the field, articles that cited to his published work, and letters of support discussing his past research studies.

The Director determined that the Petitioner did not demonstrate that he was well positioned to advance his proposed endeavor. On appeal, the Petitioner contends that his "in-depth education in the specialty" and his "long track record of experience in the field . . . has attracted the interest of established research groups in the field." He concludes that, based on "his **education, skills, knowledge, and record of success** in related or similar efforts," he has met the requirements of the second prong of the national interest waiver. (Emphasis in original). For the reasons discussed below, the evidence is insufficient to demonstrate that he is well positioned to advance his proposed research under *Dhanasar*'s second prong.

The Petitioner submits an article published in the *Pacific Standard* entitled [redacted]
[redacted]
[redacted] The article summarizes the results of the [redacted] Study, a clinical trial conducted by [redacted] University in collaboration with [redacted] University of Health Sciences, which documented a new [redacted] treatment approach. According to the Petitioner, he served as medical monitor on the [redacted] project, and regards the article in the *Pacific Standard* as a record of his success. Although the record contains a letter from [redacted] the lead investigator for the trial, who states that the Petitioner played a "vital role" in the study by ensuring patient eligibility and ensuring their safety, as well as liaising between investigators, coordinators, and other researchers, the article makes no mention, and gives no credit, to the Petitioner's contributions in this study. Merely asserting that he played a "vital role" in the study, without more, does not sufficiently outline the extent of his involvement in or contributions to this study, such that it demonstrates a record of success or a level of interest in his work from relevant parties as contemplated by *Dhanasar*'s second prong.

Other letters supporting the petition discussed the Petitioner's various medical research projects.⁵ For example, regarding the Petitioner's research involving [redacted] as a risk factor for [redacted] [redacted] assistant professor of internal medicine at [redacted] University College

⁵ While we discuss a sampling of these letters, we have reviewed and considered each one.

of Medicine, and [redacted] at the [redacted] Clinic, both stated that as a result of conducting database analysis of the [redacted] maintained by the [redacted] Clinic, the Petitioner was able to determine the links between [redacted] and various [redacted] risks, such as low-grade [redacted] leading to [redacted] and [redacted] leading to [redacted]. According to [redacted] the aforementioned study was “cited in an international study of [redacted] management, published in the *American Journal of Gastroenterology* in 2015, that was used to create an international definition for the term [redacted] and ultimately to produce some of the care guidelines now used for the disease in the United Kingdom.” A copy of this article is included for reference in the record,⁶ and indicates that the Petitioner’s study, entitled [redacted]

was cited once. Although the record also includes a June 2018 Google Scholar citation report indicating that the aforementioned article has received 30 citations since its publication in 2016, we note that the Beneficiary was one of eight authors of this study, and the record lacks evidence demonstrating the extent of his contributions to the study. The Petitioner has not demonstrated his level of involvement in this study, or that this number of citations constitutes a record of success or a level of interest in his work from relevant parties sufficient to meet *Dhanasar*’s second prong.

A letter by [redacted] director of the [redacted] Medical Center, discusses the Petitioner’s research with regard to the attitudes of [redacted] medical students toward complementary and alternative medicine. [redacted] states that the Petitioner, through his research, sought “to increase the body of available literature on this topic,” noting that his paper on this topic was cited 10 times.⁷ Again, the Petitioner has not demonstrated that this number of citations constitutes a record of success or a level of interest in his work from relevant parties sufficient to meet *Dhanasar*’s second prong.

The Petitioner also submits advisory letters discussing his research on the [redacted] strain of [redacted] as well as his findings regarding the use of the drug [redacted] as a safe alternative for [redacted] an oral [redacted] g used with aspirin to prevent [redacted] following [redacted] placement. According to [redacted] fellow in [redacted] at [redacted]’s University Health Network, he cited the Petitioner’s finding in his 2013 article entitled [redacted], and states that he recommends the use of [redacted] in place of [redacted] to other physicians based on the Petitioner’s findings. [redacted] however, does not offer specific examples of how the Petitioner’s findings from this study has affected clinical guidelines or otherwise constitute a record of success in his field.⁸

While the Petitioner’s references discuss a variety of medical research studies he has undertaken, they do not explain how these past projects position him to advance his proposed research aimed at [redacted] and the prevention of [redacted] as a [redacted] complication. Additionally, the

⁶ The article referenced by [redacted] is entitled [redacted] published in *The American Journal of Gastroenterology* in 2015.

⁷ The aforementioned Google Scholar citation report indicates that the Petitioner was one of three authors of this article, which was published in *The Journal of the American Osteopathic Association*. The report further reflects that the article reporting their findings has been cited 13 times since its publication in 2012.

⁸ The aforementioned Google Scholar citation report reflects that the article in *Journal of Invasive Cardiology* reporting his findings has been cited 14 times since its publication in 2011.

Petitioner has not shown that the limited amount of time his employer indicates that he will devote to research is sufficient to demonstrate that he is well positioned to advance the aforementioned [redacted] studies. For instance, the letter from the president of [redacted] his current employer, states that he will “investigate the feasibility of the application of a wide array of scientific principles/concepts as it relates to our research projects.” (Emphasis added). The employer further states that the Petitioner specializes in software development, property management, IT development, and biotech research, disparate fields from his proposed focus on [redacted] and notes that he will work on a number of specific research projects at the company’s greenhouse. Based on these statements, it appears that the Petitioner’s primary responsibility will be to conduct research on a variety of projects as determined by [redacted]. Although the employer also indicates that the Petitioner will participate in a study exploring the relationship between [redacted] [redacted] treatments, and [redacted] which relates to his proposed endeavor, it also indicates that this is just one of a number of projects to which he will be assigned. Absent a breakdown of the percentage of time devoted to the aforementioned projects, it is unclear to what extent the Petitioner will be pursuing his proposed endeavor.

Regarding citation of the Petitioner’s work, the information from Google Scholar indicates that his four highest cited articles in *Clinical Gastroenterology and Hepatology* (2015), *Journal of Diabetes and its Complications* (2013), *The Journal of Invasive Cardiology* (2011), and *The Journal of the American Osteopathic Association* (2012) each received 30, 24, 14, and 13 citations, respectively. The Petitioner also provided 2018 data from Clarivate Analytics regarding baseline citation rates and percentiles by year of publication for various research fields, including “Clinical Medicine.” This documentation from Clarivate Analytics states that “[c]itation frequency is highly skewed, with many infrequently cited papers and relatively few highly cited papers. Consequently, citation rates should not be interpreted as representing the central tendency of the distribution.” Regardless, the Petitioner has not demonstrated that the number of citations received by his articles reflects a level of interest in his work from relevant parties sufficient to meet this prong.

Regarding the Petitioner’s peer review activities, he provided documentation indicating that he reviewed numerous articles for *EC Gastroenterology and Digestive System*. The Petitioner, however, has not documented the reputation of the journal or offered other evidence demonstrating that his peer review experience rises to the level of rendering him well positioned to advance his proposed research endeavor. The record does not show that the Petitioner’s occasional participation in the widespread peer review process represents a record of success in his field or that it is otherwise an indication that he is well positioned to advance [redacted] research as it relates to [redacted].

The Petitioner also refers to our non-precedent decision concerning a metallurgical engineer who was found to be well positioned to advance his proposed endeavor. *Matter of F-E-*, ID# 46885 (AAO Mar. 20, 2017). This decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. See 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. Moreover, our finding in *Matter of F-E-* is significantly discernable from the present matter, and the Petitioner has not

demonstrated that the facts of that case are similar or identical to those in the matter currently before us.⁹

Furthermore, while the Petitioner's Master of Public Health degree renders him eligible for the underlying EB-2 visa classification, the Petitioner has not shown that his academic accomplishments by themselves are sufficient to demonstrate that he is well positioned to advance his proposed endeavor. We look to a variety of factors in determining whether a petitioner is well positioned to advance his proposed endeavor and education is merely one factor among many that may contribute to such a finding.

The evidence indicates that the Petitioner has conducted and published research in the field of [REDACTED] focusing on a variety of topics, including the prevention of [REDACTED] as a [REDACTED] complication, but he has not shown that this work renders him well positioned to advance his proposed cancer research. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance their proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner, however, has not shown that his published work has served as an impetus for progress in the medical field, that it has affected diagnostic or treatment protocols for diseases, or that it has generated substantial positive discourse in the medical community. Nor does the evidence otherwise demonstrate that his work constitutes a record of success or progress in the cancer or medical biostatistics research fields. As the record is insufficient to show that the Petitioner is well positioned to advance his proposed research endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires a petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that he is eligible for a waiver due to his education, knowledge, and skills in biostatistical research and his research accomplishments. However, as the Petitioner has not established that he is well positioned to advance his proposed endeavor as required by the second prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as

⁹ The petitioner's proposed endeavor in the cited matter was to "help the mining industry implement 'sustainable, profitable, and environmentally conscious practices to ensure the survival of the planet for future generations.'" Contrary to the facts in the instant petition, the petitioner in that matter demonstrated how "his leadership role in research projects and, most importantly, his track record managing large scale mining projects, position him well to continue to advance his proposed endeavor of developing and implementing sustainable mining techniques."

a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.